

UNITED STATES CONCERN AT CERTAIN AIR AGREEMENTS DEPARTING FROM THE PRINCIPLES OF THE BERMUDA AGREEMENT OF 1946

Current Economic Developments,¹ Lot 70D467

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SECRET

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Commonwealth Aviation Trends Matter of Deep Concern to US

We are seriously concerned over the possible effects on international civil aviation policies of the sharp veer from Bermuda concepts reflected in current aviation developments within the Commonwealth. There is some evidence that these developments may place pressure first on the UK and then on the US to recede from the Bermuda formula to a more restrictive type aviation bilateral—which would hamper US civil airline operations greatly and would destroy the general world-wide aviation pattern along Bermuda lines as accepted by most states.²

British civil aviation officials have asked our views on the dilemma confronting the UK with respect to Commonwealth aviation matters.³

¹ "Current Economic Developments" was a weekly secret summary of events and developments relating to the conduct of the foreign economic policy of the United States, as seen and compiled by the officers of the divisions and offices of the economic area of the Department of State. It was published by the Policy Information Committee of the Department, and disseminated to concerned Departmental officers and diplomatic missions and consular posts overseas.

² The references are to the bilateral air transport agreement concluded between the United States and the United Kingdom at Hamilton, Bermuda on February 11, 1946. For texts of the several instruments signed or initialled at that time, see Department of State Treaties and Other International Acts Series (TIAS) No. 1507, or 60 Stat. (pt. 2) 1499; for documentation regarding the negotiation of the agreement, see *Foreign Relations*, 1946, vol. 1, pp. 1450 ff. For a useful discussion of what is meant by a general world-wide aviation pattern "along Bermuda lines", see article entitled "Bilateral Air-Transport Agreements Concluded by the United States", by Joe D. Walstrom, Department of State *Bulletin*, December 22, 1946, pp. 1126 ff. Essentially, the Bermuda-type agreement barred arbitrary restrictions in carriage capacity, number of flights, and perhaps most importantly the right to set down and pick up passengers and freight at intermediate points between the termini of a trunk route (known as "fifth-freedom traffic"). It was the hope of U.S. policy-makers that the U.S.-U.K. Bermuda bilateral agreement would become the model for other states concluding bilaterals, and that ultimately, when a world-wide aviation pattern emerged along Bermuda lines, it would be possible to hold a general aviation conference to conclude a world-wide multilateral agreement based on Bermuda principles.

³ The documentation in the Department of State central indexed files relating to the issues described herein, is scattered and sparse. Two basic file series are 741.0027 (aspects of U.K. aviation) and 741.4527 (aspects of U.K.-India aviation).

The Australians are firm in their policy of anti-Bermuda and, without consulting the UK, have just negotiated an aviation bilateral with Pakistan calling for 50-50 traffic division and have agreed to an Indian proposal for joint aviation discussions along the same lines. India, too, is adamant on the 50-50 capacity split and the reserving of India-Pakistan traffic for carriers of those countries. In preliminary talks with the UK, India has taken the position that Bermuda does not work, that US carriers and KLM have carried far more traffic to and from India than is justified and that it plans to renegotiate with the US and the Netherlands soon in order to correct this situation.

The UK claims that it strongly wishes to avoid giving in to the opponents of Bermuda type air agreements, particularly now that the US has brought Canada into the fifth freedom camp.⁴ Every effort will be made to achieve a Bermuda type agreement in each case. However, the UK is bound by its practice of reserving the right to conclude other arrangements with the Commonwealth. In the case of India, the UK is anxious to avoid any action which might strain the slender ties binding India to the Commonwealth. In the event the Indians will not give on the fifth freedom issue, the UK will insist that the agreement not become effective until after renegotiation of the US-India bilateral. In our view, this step would have the same effect as if the UK and India were jointly attempting to force the US from the fifth freedom field under the Bermuda principles.

US-UK aviation discussions in 1946 clearly recognized a Commonwealth policy regarding division of traffic between Commonwealth nations—but it did not apply to other than third and fourth freedom traffic between two Commonwealth countries. British extension of that policy to include fifth freedom traffic rights insofar as other than Commonwealth countries are concerned appears to us seriously to threaten Bermuda principles throughout the world.

We are expressing our deep concern to Australia over its recent restrictive agreement with Pakistan and our surprise that the freer competitive provisions of the Bermuda formula, inherent in the US-Australian type agreement,⁵ were not followed. We frankly admit our concern over seeing any nation agree to division of traffic on a predetermined basis, considering that such agreements erroneously sacrifice the concept of competitive growth of the transport industry to a doctrine of greater security of operation inherent in predetermination of traffic.

⁴ A United States-Canada bilateral air transport agreement was concluded on June 4, 1949; for text, see TIAS 1934. It was of the Bermuda-type, and was considered by the Department of State to be of especial significance, as it was believed that Canadian non-adherence to such a bilateral had strengthened the opposition of other countries to the Bermuda principles.

⁵ A Bermuda-type bilateral air transport agreement was concluded between the United States and Australia on December 3, 1946; for text, see TIAS 1574.

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[WASHINGTON,] October 3, 1949.

US-UK Consultation on Aviation Issues. Although the UK reaffirmed its support of the Bermuda principles during recent aviation talks in London,¹ we feel that future Commonwealth aviation developments bear close watching for any possible further weakening of the British position in the face of a distinct trend away from these principles. It is obvious that there are strong differences of views within the British Ministry of Civil Aviation and that the strength of original proponents of Bermuda has been dissipated by shifts of assignments. Other factors also came to light—such as technical aviation developments—which, by eliminating the economic dependence of British carriers upon fifth freedom “pickup” as well as “fill-up” traffic, may affect their concern for retaining the full five freedoms. Whereas full fifth freedom traffic is basically important to economic operations by US carriers on international trunk routes, the British claim they can operate successful services into the Commonwealth countries based upon third and fourth freedom traffic and some “pickup” fifth freedom.

UK-Indian Interim Air Arrangements. These talks were held principally in the hope that some means could be found to bolster British resistance to Indian pressure for conclusion of a restrictive air transport agreement, providing for 50-50 capacity split and reserving India-Pakistan traffic for carriers of those countries. (See page 1, June 27 and page 13, July 5, 1949 issues of *Current Economic Developments*.)² The British frankly acknowledge that it would be politically impossible for them to run the risk of having to give up their services to India, which for some time have rested upon precarious extensions of operating permission to BOAC. In consequence, when the British were unable to conclude a satisfactory Bermuda-type agreement with India, they felt compelled to enter into an interim arrangement which would provide for BOAC's operations. The British maintain that this is a *modus vivendi* accepted only as the result of failure to achieve a permanent agreement and that it is purely temporary and without prejudice to the terms of the bilateral agreement to be concluded later. We contend that such an arrangement simply transferred the

¹ These informal talks were arranged at the request of the Department of State, which was “convinced UK-India bilateral negotiations raised fundamental policy issues requiring full and immediate exchange of views. . . .” (Department's telegram 2818, to London, August 9, 1949, 741.0027/8-249) The talks took place in London in mid-August. There seems to have been no reporting about these talks by cable traffic from London.

² No extracts are printed from the July 5 issue.

previous operating arrangements from a unilateral airline level to a governmental level and consequently could scarcely fail to prejudice the final agreement. The British have placed us in a most awkward position by accepting an Indian clause providing that if during the interim India secures any restriction on the carriage of traffic between India and Pakistan by US carriers, the UK will accept similar restriction for its airline operations.

The British will try to eliminate this clause from the interim agreement and will make every effort short of terminating BOAC service to and through India to obtain the desired type bilateral. A public statement will be made that the interim arrangement results from a difference of views with India concerning basic principles involved in order to leave the way clear toward further efforts to obtain a Bermuda agreement. If they are unable to achieve this objective during the twelve-month period, we would consider the continuation of the interim arrangement as a lesser evil than conclusion of a non-Bermuda agreement.

Multilateral Air Transport Convention. The British think that it might be possible to secure a multilateral agreement if we are willing to modify the Geneva draft³ of the capacity clause to eliminate the additional or "pickup" fifth freedom language. We are convinced it will not be possible at any time in the near future to secure a multilateral agreement on terms even as favorable as those suggested by the British. This view is more firmly supported by such recent developments as the Australian-Indian bilateral and the French agreement with Spain which reserves traffic between the two countries as a monopoly for French and Spanish carriers. Therefore, reopening the issue at this inauspicious time would be likely to produce undesirable results by informing and coalescing the opposition to Bermuda as occurred during the Geneva conference in 1948. We did agree to exchange our proposed comments to ICAO on the subject of a multilateral agreement, which will be submitted before October 31 to the ICAO Assembly.

[Here follows brief discussion of certain technical problems, and projected arrangements on the part of aviation specialists of the United States and the United Kingdom for addressing themselves to these problems within the framework of the U.S.-U.K. (Bermuda) Air Transport Agreement.]

³ This refers to a meeting of the Council of the International Civil Aviation Organization (ICAO) at Geneva in 1947, which "failed in its efforts to achieve a multilateral but did serve as an exceedingly useful forum for the discussion of major issues at stake." (*Current Economic Developments*, Bulletin No. 233, Dec. 12, 1949).